

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

UNITED STATES OF AMERICA §
v. § CRIMINAL NO. 4:17-CR-047-SDJ
GILBERTO AGUILAR, JR (3) §

MEMORANDUM OPINION AND ORDER

Before the Court is Defendant Gilberto Aguilar Jr.'s Motion for Modification or Reduction of Sentence under Section 401 of the First Step Act of 2018, (Dkt. #175). The United States filed a response in opposition, (Dkt. #178). Having considered the motion, the subsequent briefing, and the applicable law, the Court **DENIES** the motion.

I. BACKGROUND

On April 5, 2018, Aguilar was sentenced to a term of 180-months' imprisonment pursuant to a binding plea agreement in which he pleaded guilty to conspiracy to possess with the intent to manufacture and distribute methamphetamine. (Dkt. #142). Aguilar is serving his sentence at FCI El Reno with an anticipated release date of January 16, 2031. On November 8, 2021, Aguilar filed a motion with this Court seeking a reduction in sentence under Section 401 of the First Step Act.

II. DISCUSSION

Section 401 of the First Step Act (the “FSA”), which was enacted on December 21, 2018, lowered statutory minimum sentences for recidivist defendants—specifically, those who had committed offenses under 21 U.S.C. § 841(b)(1)(A) and

had been previously convicted of qualifying drug offenses. *United States v. Leon*, No. 9:10-CR-29-RC, 2020 WL 4747859, at *1 (E.D. Tex. Aug. 15, 2020). However, “Section 401 of the First Step Act is *not* retroactive” and indeed states that “[t]his section, and the amendments made by this section, shall apply to any offense that was committed before the date of enactment of this Act, if a sentence for the offense has not been imposed as of such date of enactment.” *Id.* (emphasis added).

Because Aguilar was sentenced on April 5, 2018, which is before the FSA was enacted on December 21, 2018, Section 401(c) of the FSA cannot apply to reduce his sentence. As a result, his motion will be denied.

III. CONCLUSION

For the foregoing reasons, it is **ORDERED** that Defendant Gilberto Aguilar Jr.’s Motion for Modification or Reduction of Sentence under Section 401 of the First Step Act of 2018, (Dkt. #175), is **DENIED**.

So ORDERED and SIGNED this 20th day of July, 2022.



SEAN D. JORDAN
UNITED STATES DISTRICT JUDGE